

**Arizona Supreme Court****Civil Special Action****CV-21-0225-SA****STATE ex rel JAMES MATLOCK v DOUGLAS A DUCEY****Appellate Case Information**

Case Filed: **17-Sep-2021** Archive on: 29-Sep-2031 (planned)  
Case Closed: **29-Sep-2021**

**Dept/Composition****Side 1. STATE OF ARIZONA ex rel: JAMES E. MATLOCK, Petitioner****(Litigant Group) STATE OF ARIZONA ex rel: JAMES E. MATLOCK**

- James Matlock, Pro Se PRO SE

**Side 2. GOVERNOR OF ARIZONA: DOUGLAS A. DUCEY, JR., Respondent****(Litigant Group) GOVERNOR OF ARIZONA: DOUGLAS A. DUCEY, JR.**

- Doug Ducey, Office of the Governor

**CASE STATUS****Sep 29, 2021....Case Closed****Sep 29, 2021....Decision Rendered****CASE DECISION****29-Sep-2021 ORDER**

\* On September 17, 2021, Petitioner Matlock pro se filed an "Original Action in Mandamus" and on September 27, 2021 filed "Signed Original Action in Mandamus and Affidavits." Petitioner seeks judgment declaring that Governor Doug Ducey (1) be compelled to

Filed: **29-Sep-2021**

Mandate:

Decision Disposition

**Declined****Ann Timmer****4 PROCEEDING ENTRIES**

- 17-Sep-2021 FILED: Original Action in Mandamus; Blank Document (Petitioner Matlock, Pro Se)
- 27-Sep-2021 RECEIPT No.: ASC2021-00880 ; \$280.00, Authorization: 820172149349882702, Applied to: STATE OF ARIZONA ex rel: JAMES E. MATLOCK - Class A Filing Fee (\$280.00) Paid for: STATE OF ARIZONA ex rel: JAMES E. MATLOCK - By nCourt LLC
- 27-Sep-2021 FILED: (Signed) Original Action in Mandamus; Affidavits

Arizona Supreme Court

Civil Special Action

CV-21-0225-SA

STATE ex rel JAMES MATLOCK v DOUGLAS A DUCEY

4 PROCEEDING ENTRIES

4. 29-Sep-2021 On September 17, 2021, Petitioner Matlock pro se filed an "Original Action in Mandamus" and on September 27, 2021 filed "Signed Original Action in Mandamus and Affidavits." Petitioner seeks judgment declaring that Governor Doug Ducey (1) be compelled to uphold the Constitution of Arizona; and (2) be compelled to charge the Attorney General with his duties to immediately cease compelling or participating "in health care data collection, health care services and [being forced to] provide health care information." Petitioner also requests (3) an award of attorney fees and costs, (4) a speedy hearing, and (5) such other relief to which Petitioner may be entitled. Petitioner asks the Court to compel Governor Ducey to uphold and enforce [Article 27 section 2.A] of the Arizona Constitution, which states, "A law or rule shall not compel, directly or indirectly, any person, employer or health care provider to participate in any health care system." The Court en banc has considered the petition. Even assuming the Petitioner had established his factual allegations are true, this Court cannot at this juncture grant the relief requested.

1. Mandamus relief is not available for the Petitioner's requests. A request for mandamus relief may be brought under the Arizona Rules of Procedure for Special Actions. See Ariz. R.P. Spec. Act. 1(b). However, the only questions that may be raised in a special action are: (a) whether the defendant has failed to exercise discretion which he has a duty to exercise; or to perform a duty required by law as to which he has no discretion; or (b) whether the defendant has proceeded or is threatening to proceed without or in excess of jurisdiction or legal authority; or (c) whether a determination was arbitrary and capricious or an abuse of discretion. Ariz. R.P. Spec. Act. 3.

Mandamus is a remedy used to compel a public officer to perform a duty required by law. However, "[m]andamus does not lie if the public officer is not specifically required by law to perform the act." Yes on Prop 200 v. Napolitano, 215 Ariz. 458, 464 ¶ 9 (App. 2007) (citations omitted). A mandamus may only be issued "to compel, when there is not a plain, adequate and speedy remedy at law, performance of an act which the law specially imposes as a duty resulting from an office." A.R.S. § 12-2021.

A mandamus action may only be brought if the statutory duty imposed on the public official or board is purely "ministerial." Ponderosa Fire Dist. v. Coconino Cnty, 235 Ariz. 597, 601-02 ¶ 19 (App. 2014). A ministerial duty is one that specifically describes the manner of performance and "leaves nothing to the discretion" of the public official or board. Id. In contrast, "if an action of a public officer is discretionary that discretion may not be controlled by mandamus." Id. at 602 (internal citations omitted). As an example, this Court has granted mandamus relief to enjoin county voting officials from distributing erroneous voting instructions as a "non-discretionary duty to provide ballot instructions that comply with Arizona law." Ariz. Pub. Integrity All. v. Fontes, 250 Ariz. 58, 62 ¶ 12 (2020).

Also, "mandamus may be used to compel an officer, board or commission to take action even though such action is discretionary, but it cannot be used to require that such discretion be exercised in a particular manner." Sensing v. Harris, 217 Ariz. 261, 264 ¶ 11 (App. 2007) (citation omitted) (internal quotation marks omitted) (explaining that "a professional licensing board may have discretion to deny a license, but it may not delay an application for an extended period when the statutes require it to act").

Further, mandamus will not issue to require the Attorney General to advise the Governor or other state officials of their duties. See generally Yes on Prop 200, 215 Ariz. at 467 ¶ 23 (observing that absent a government official's request or separate statutory authority, "it would be no more appropriate for [the courts] to compel the Attorney General to give advice to the Governor than it would be for [the courts] to compel the Governor to ask for it").

2. Mandamus relief in this court is not appropriate where resolution depends on disputed facts. Petitioner contends that "directly and indirectly citizens of Arizona were forced by both federal and state, both private and public entities to submit to unconstitutional laws or mandates" but by bringing this request in this Court Petitioner would prevent the development of a factual record in a trial court. See Arizonans for Second Chances, Rehab., & Pub. Safety v. Hobbs, 249 Ariz. 396, 405 ¶ 20 (2020) (accepting special action jurisdiction of a mandamus action where resolution did not depend on disputed facts). And although this Court has accepted mandamus jurisdiction to resolve whether the Secretary of State is required to accept petitions online to allow citizens to exercise their constitutional right to initiate legislation, id., in that case, again, resolution did not depend on disputed facts.

Finally, even assuming the petition's validity, the Petitioner should have filed it in a lower court. Arizona Special Actions Rule 7(b) requires a petitioner to explain why the petition should be brought in this Court rather than in a lower court in the first instance. Petitioner did not provide a compelling reason as to why this matter could not be initiated in a lower court, including the superior court, which has the ability to consider any evidence presented in accordance with court rules and make factual findings. As an alternative to the disposition below, the failure to comply with Rule 7(b) would be grounds for dismissal without prejudice. Therefore,

IT IS ORDERED declining jurisdiction. (Hon. Ann A. Scott Timmer)